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SEP 02 2004

**OFFICE OF PETITIONS**

In re Application of :  
Priegnitz, et al. :  
Application No. 09/768,504 : **ON PETITION**  
Filed: January 25, 2001 :  
Attorney Docket No. TI-31455 :

This is a decision on the "PETITION TO REVIVE PATENT APPLICATION UNINTENTIONALLY ABANDONED UNDER 37 CFR 1.137(b)", filed May 25, 2004, which is also being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181 due to petitioner's statement that no fee should be charged.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **DISMISSED**.

Petition Under 37 CFR 1.181:

The above-identified application became abandoned for failure to file a proper reply to the final Office action mailed August 12, 2003. No extensions of time under 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on November 13, 2003. A Notice of Abandonment was mailed on May 18, 2004.

Petitioner states that the abandonment was not the fault of the Applicant, and that the application became abandoned because an

Appeal Brief was allegedly not received the by Patent and Trademark Office. In support thereof, Petitioner has included a copy of postcard receipt, itemizing an Appeal Brief, 2 month extension of time, and a Request for an Oral Hearing.

First, it is noted that the postcard receipt does not contain a USPTO date stamp. Accordingly, it can not be used to establish that those items listed thereon were received in the Patent and Trademark Office.

However, even if the postcard receipt did contain a proper USPTO date stamp, the application did not become abandoned for failure to file an Appeal Brief. No Notice of Appeal was ever filed. Applicant must file a Notice of Appeal (with fee) before (or concurrent with) the filing of an Appeal Brief. It is true that with the Appeal Brief, Applicant included an authorization to charge any additional fees to his deposit account, and that accordingly, the fee for the filing of a Notice of Appeal arguably could have been charged. However, the last day the Notice of Appeal could have been filed (with the maximum 3 month extension of time) would have been February 12, 2004 (as the final Office action was mailed August 12, 2003). Applicant does not claim to have mailed the Appeal Brief until March 1, 2004.

Petition Under 37 CFR 1.137(b):

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." There is no fee for the renewed petition. This is **not** a final agency decision within the meaning of 5 USC 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d).

The instant petition lacks item (1), the required reply.

On renewed petition, petitioner must submit a proper reply in response to the final Office action mailed August 12, 2003. The proposed reply to a final Office action required for

consideration of a petition to revive must be either (1) **a Notice of Appeal (and fee required by law)**; (2) an amendment that *prima facie* places the application in condition for allowance; (3) the filing of a continuing application under 37 CFR 1.53(b) or if applicable, 1.53(d); or (4) a request for a continuing examination (RCE) under 37 CFR 1.114.

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Mail Stop Petitions  
                  Commissioner for Patents  
                  P.O. Box 1450  
                  Alexandria VA 22313-1450

By FAX:           (703) 872-9306  
                  Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0272<sup>1</sup>.



Cliff Congo  
Petitions Attorney  
Office of Petitions

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<sup>1</sup> At the end of September, this phone number will change to (571) 272-3207.